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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 572

PRUDENCE REALIZATION CORPORATION,
Petitioner,

v.

GEORGE E. EDDY, et al.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENTS JAMES L. WHITE, SARA WHITE, EVELYN B. WHITE, SYBIL A. WHITE AND CORA BENTON

FRANK L. WEIL,
Attorney for Respondents, James L. White, etc.

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Opinions Below

The opinion of the Circuit Court of Appeals for the Second Circuit is as yet unreported but is printed in the Record at pages 614-623.

The opinions of the District Court are unreported but are printed in the Record at pages 22-47 and 479.

Jurisdiction

The decree of the Circuit Court of Appeals was entered on December 8, 1947 (R. 623). Petitions for rehearing filed in that Court were denied on January 5, 1948 (R. 650). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended, 28 U. S. C., Section 347(a), and Section 24(c) of the Bankruptcy Act, as amended, 11 U. S. C., Section 47(c).

Question Presented

Are the Publicly-Held Bonds entitled to interest in full, that is, 5½%, up to the time of their payment, in accordance with their original tenor?

Statute Involved

The pertinent provisions of the Bankruptcy Act, as amended, are annexed to petition as Appendix A.

Statement of Facts

The respondents James L. White, Sara White, Evelyn B. White, Sybil A. White and Cora Benton are the owners of Publicly-Held Bonds of the Fifth Series originally issued by the Prudence-Bonds Corporation, which were guaranteed both as to principal and interest by the Prudence Company, Inc. (predecessor corporation of the petitioner herein) (R. 326). On June 29, 1934, the Prudence-Bonds Corporation filed a petition for reorganization under Section 77b of the Bankruptcy Act (R. 87). There were outstanding at that time eighteen series of first mortgage collateral bonds aggregating in principal amount approximately $56,000,000 (R. 325); each series being

secured by a trust agreement made by the Debtor to a bank as trustee, under which bonds, mortgages, cash and other securities were transferred to the trustee as a trust fund for the security of the bondholders (R. 728).

The Fifth Series was secured by a Trust Agreement dated April 1, 1925, made by the Debtor, Prudence-Bonds Corporation, to the Bank of the Manhattan Company as trustee (R. 90-91). In this series, at the time the Debtor filed its petition, there were outstanding $2,544,300 principal amount of bonds which matured in varying amounts between October 1, 1930 and October 1, 1938, and all of which provided for semi-annual payments of interest at the rate of 5½% per annum (R. 91-92).

On February 1, 1935, the guarantor company, i.e., the Prudence Company, Inc., filed a petition under Section 77b. Thereafter, on April 27, 1937, it was found that the Debtor was insolvent and that the value of the collateral securing each of the eighteen series was less than the principal amount of the outstanding bonds and accrued unpaid interest thereon (R. 815). The Debtor then was reorganized under a plan finally confirmed on May 26, 1939, under which its assets and business were vested in a new company formed under the name of Prudence Realization Corporation (R. 90), the petitioner herein. The plan further provided that the 5½% interest on bonds as originally specified was to be payable if, and only to the extent that, earned income would suffice to pay such interest.

When the Debtor filed its petition, the guarantor company held $1,910,300 principal amount of the Debtor's bonds in varying amounts in each of the eighteen series (R. 93). It held $67,200 in the Fifth Series, and as such claimed equality with the other bondholders of the series, whose bonds had been guaranteed by it. The original plan of reorganization provided that the Court should pass upon this claim, and Section 11 of the original plan further provided that if, irrespective of the provisions of the plan, the Guarantor's bonds were to be determined

on a parity with the Publicly-Held Bonds, they were to be so treated, whereas, if the Public-Held Bonds were awarded priority, the Guarantor's Bonds should not "be entitled to receive any distributions on account of principal until all of the Publicly-Held Bonds have been fully paid, redeemed, purchased or retired". On July 21, 1937, the Court decided that the Guarantor's Bonds were "not entitled to share in the collateral * * * on a parity" with the Publicly-Held Bonds; that the Guarantor's Bonds were "not enforcible obligations either as to principal or interest against their respective trust funds * * *, until" the Publicly-Held Bonds should "have been paid or provided for in full, both as to principal and interest heretofore accrued or hereafter accruing"; and that they should be so entitled "if and when and only after" the Publicly-Held Bonds should "have been paid or provided for in full, both as to principal and interest". The Guarantor Company (the petitioner herein) appealed from this order. The Amended Plan which was drafted before the appeal was disposed of incorporated the alternative possibilities precisely as recited in Section 11 of the original Plan. The appeal was dismissed on January 7, 1938, by virtue of a settlement which accepted the order of July 21, 1937, so far as it fixed the terms of the subordination (R. 95-100); and the Amended Plan was confirmed on January 18, 1938, still, however, without any change in Section 11. The District Court on said date made and entered eighteen orders providing for Amended Plans of Reorganization for each of the series and an Amended General Plan of Reorganization (R. 102). This latter plan provided for the formation of a new corporation to take over the servicing of the collateral underlying all eighteen series (R. 786-787).

It was deemed beneficial for all bondholders to have the underlying collateral of all series administered by one agency so that the various bondholders "should not only preserve for themselves the full value of their own collateral, but by union, they should enable the less fortunate

to be benefited from any excess of collateral of the better issues" (R. 782-784).

On April 27, 1938, a Supplemental Trust Agreement was confirmed which named the City Bank Farmers Trust Company as Trustee of each of the eighteen series and directed the former corporate trustees to turn over all collateral to the new trustee and to file their accountings; and directed the Debtor to transfer all of its rights to the collateral securing the eighteen series (R. 349). Two passages in Article II of the Supplemental Agreement dealt with the subordination of the Guarantor's Bonds: Section 8 declared at its close that they should "not be entitled to share in the Collateral until all other Bonds have been paid or provided for in full according to their tenor"; and Section 10, that they should not "participate in proceeds of the Collateral * * * until the public-owned or held Bonds have been fully paid, purchased or retired by the Corporation".

On September 8, 1938, the Bank of the Manhattan Company, as Trustee under the original trust agreement with the Debtor, filed its account in respect to the Fifth Series (R. 135). Objections were made to this account and the objections were sustained by the District Court on March 28, 1944, and thereafter the Circuit Court affirmed the District Court (R. 139-140). On May 16, 1945, a final judgment was entered against the Bank of the Manhattan Company for $1,472,763.32, with 6% interest from March 28, 1944 (R. 141). The Circuit Court of Appeals in its opinion (*President and Directors of the Bank of the Manhattan Co.* v. *Kelby,* 147 F. (2d) 465) said:

> "The Bank must restore to the fund what was withdrawn from it through the Bank's misconduct. It is against the fund, as it will be when restoration has been made, that the bondholders will assert their claims for the unpaid principal of, and interest on, their bonds. If realization on assets now in the fund, plus the restoration by the Bank, leaves an excess, then of course the Bank will be entitled to the excess."

On May 16, 1945, the Bank of the Manhattan Company paid to the New Corporation $1,572,991.93 in full payment of the judgment for the benefit of the Fifth Series bondholders (R. 147-148). Out of this sum $498,684.55 was allocated to the Income Account, and the balance, after deducting allowances and disbursements, to the Principal Account (R. 149-150).

At the time of the Special Master's Report the Principal Account of the Fifth Series contained $1,349,545.62, less $81,565.14 which the Special Master found had been loaned by the Income Account to the Principal Account and should be restored to the Income Account (R. 149-150). There was then due unpaid principal on the Publicly-Held Bonds $1,077,450 (R. 150). Varying payments have been made on account of interest on the Publicly-Held Fifth Series Bonds, and these payments have been sufficient to pay interest in full at 5½% up to January 19, 1941 (R. 150). As of August 1, 1945, the total deficiency in the payment of interest on the Publicly-Held Bonds of the Fifth Series amounted to $411, 783.18 (R. 159-160). Upon payment in full of the principal of the Publicly-Held Bonds, Fifth Series, the balance remaining in the Principal Account is $190,530.48, in cash, and two mortgages aggregating in face amount $156,968.03 (R. 150-151).

The present litigation involves conflicting claims to this balance remaining in the Principal Account. These claims are:

1. The former trustee (The Bank of the Manhattan Company) claims said surplus by virtue of the opinion of the Circuit Court that any excess was to be returned to it.

2. The petitioner (successor to the guarantor corporation) claims that, pursuant to the Plan and Agreement, the bonds became income bonds for all purposes, and that payment of principal together with payment of income constitutes full payment.

3. The Publicly-Held Bonds assert that there is no surplus until their bonds have been paid in full according to their original tenor, that is, 5½%, as originally guaranteed. It is contended that the restriction of interest to income from the collateral merely affected their right to interest as against the new company during the period of liquidation, but did not impair their ultimate right as lienors upon that collateral for principal and interest in full, i.e., 5½%.

Argument

The petitioner asserts that the Court of Appeals was in error and advances three reasons for granting the writ:

1. The Plan or Agreement as interpreted by petitioner would not be illegal.

While recognizing the basic rule that senior creditors must be paid in full before junior creditors may take anything, petitioner claims that there are exceptions to the general rule, and that the Plan and Agreement in question fall within the exceptions.

2. The plain language of the Plan and Supplemental Trust Agreement indicates that the Publicly-Held Bonds are "fully paid" as to interest when they have received the income earned by the collateral.

3. The effect of holding that Publicly-Held Bonds are entitled to payment in full with interest to the date of payment is to frustrate the pattern of reorganization bargained for among all eighteen series of bonds.

Respondents submit that the Publicly-Held Bonds are entitled to interest at 5½% to date of payment according to their original tenor, that such was the original intention of the Plan and Supplemental Trust Agreement, and that any other interpretation would be unlawful.

1. By virtue of the District Court's decision of July 21, 1937, which held that the petitioner's bonds were not entitled to share in the collateral on a parity with the Publicly-Held Bonds, the latter were entitled to priority as to interest as well as to principal. *Consolidated Rock Co.* v. *DuBois,* 312 U. S. 510, 527, 528; *Institutional Investors* v. *Chicago, M., St. P. & P. R. Co.,* 318 U. S. 523, 546. Furthermore, the priority bondholders are entitled to interest in full until payment. *Coder* v. *Arts,* 152 F. 943, 949, 950 (C. C. A. 8), aff'd 213 U. S. 223, 245; *Ticonic National Bank* v. *Sprague,* 303 U. S. 406. Thus any provision for less than the full 5½% interest until the day of payment would be illegal. Petitioner claims to come within an exception to the foregoing principles to the effect that where the senior position of the creditor is disputed, such a dispute may be compromised by assigning the alleged senior creditor less than full seniority.

Merely to state petitioner's claim clearly in its concrete application to the present circumstances is to refute it. It is claimed that there was a dispute as to whether Guarantor's Bonds were entitled to parity with the Publicly-Held Bonds. This dispute, according to petitioner, was settled by a compromise which gave the Publicly-Held Bonds priority as to principal. As to interest, however, it is claimed the Publicly-Held Bonds accepted earned income on the collateral and surrendered forever and for all purposes any claim to full interest according to the original tenor of the bonds. The facts disclose no such compromise.

The provision of the Supplemental Trust Agreement making the Publicly-Held Bonds "income" bonds was clearly not the result of a compromise of the dispute as to whether or not the Guarantor's Bonds were entitled to parity with the Publicly-Held Bonds. The "income-interest" provision was proposed and accepted not only before the alleged compromise regarding "parity", but in fact antedated the dispute itself. Obviously, such provision did not result from any dispute or compromise of

any dispute. The "income-interest" provision was never in dispute from the beginning of the reorganization! It never was intended by either party at any time to saddle the New Corporation with an obligation to pay a fixed amount of interest during the liquidation. The only dispute between the parties related solely to the question of priority, and the settlement likewise related solely to priority. It cannot be too strongly emphasized that neither had anything to do with the question of whether the Publicly-Held Bonds were to surrender any portion of their full lien on their collateral to the extent of 5½% interest as well as principal.

Furthermore, if the "income-interest" provision had been inserted in the General Plan and the Supplemental Trust Agreement as a compromise, the Plan and the Agreement would have made it unmistakably clear that the provision was a compromise and would have explicitly delineated the rights accruing to the various parties as a result thereof.

Petitioner asserts a second exception to the basic rule that a priority creditor is entitled to interest in full ahead of any payment to junior creditors. It claims, in effect, that the lien of a secured creditor may be cancelled or transferred, provided the creditor receives compensation for his sacrifice. However, the very case cited by petitioner in support of his position, *Institutional Investors* v. *Chicago, M., St. P. & P. P. R. Co.*, supra, makes it quite clear that the compensation must be "full compensation". Clearly, if the Supplemental Trust Agreement was interpreted in the manner petitioner desires, the Publicly-Held Bonds did not receive "full compensation". It is quite true that the Plan need not provide for cash payments to secured creditors and may give them new interests in the corporate property. Such new interests, however, must be equivalent in value to the interests surrendered. *R. F. C.* v. *Denver & R. G. W.*, 328 U. S. 495, 517. In the instant case, no compensation for the alleged sacrifice of the lien for the full 5½% interest has been indicated. The right to share in the surplus collateral of other series, at best, gives the

bondholders what was originally bargained for (i.e., principal plus 5½% interest) and can in no way be deemed compensation for any sacrifice.

It is thus apparent that neither of the so-called corollaries asserted by petitioner have any application to the instant case and therefore the basic rule must prevail. Consequently such a construction of the Plan as would deprive the priority bondholders of their full right would be illegal. Where there is a choice between a lawful construction and one which is unlawful, it is fundamental that the lawful choice (respondent's construction) is to be preferred. *Hobbs* v. *McLean*, 117 U. S. 567, 576; *Great Northern Ry.* v. *Delmar Co.*, 283 U. S. 686, 691; *In re John B. Rose Co.*, 275 F. 409, 415 (C. C. A. 2); *Behre* v. *Anchor Ins. Co.*, 15 F. (2) 380, 383 (C. C. A. 2). In the instant case, moreover, such a choice is plainly in accordance with the intent of the parties as expressed in the language of the Plan.

2. We submit that a reading of the Plan clearly indicates that the sole purpose of providing that the New Corporation was obliged to pay interest only if earned, was to permit the New Corporation to liquidate the collateral in an economic and orderly manner without being saddled with the fixed interest obligation contracted for by the Debtor. There is nothing anomalous in holding that although the Publicly-Held Bonds retained their full lien both as to principal and interest against the collateral and the proceeds from the liquidation of the collateral, the New Corporation would be permitted to liquidate the collateral without being hampered in its program by being under the obligation of making fixed interest payments during the liquidation. Upon completion of the program when the reason for suspending the right of the Publicly-Held Bonds to enforce their lien as to interest no longer exists, there is no reason why the original interest obligation should not be enforced.

The language of the Plan in no way contradicts this point of view. Nowhere in the Plan is ultimate distribution dis-

cussed in any other way but "payment in full as to principal and interest". Nor does the Plan contain any language which can be said to effect any change as far as the original lien of the bondholders on the collateral is concerned. The conclusion cannot be resisted that the Plan did not intend to make, nor did it make, any change in this respect.

Neither did the Supplemental Trust Agreement effect any such change. The relevant provision in Section 77b of the Bankruptcy Act is as follows:

> "Before or after a plan is confirmed, changes and modifications may be proposed therein by any party in interest and may be made with the approval of the judge after hearing upon notice to creditors and stockholders, subject to the right of any creditor or stockholder who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor or stockholder, * * *."

If in fact the Supplemental Agreement did purport to change the Plan in accordance with the manner suggested by petitioner, such a change would obviously be "materially adverse". But said Agreement, approved by the District Court on April 27, 1939, was specifically held not to contain any modification "materially adverse" to the interests of the bondholders.

If, however, the decision of the District Court be construed as holding that the Agreement did modify the Plan as indicated but that such modification was not "materially adverse", such a finding would clearly be an abuse of discretion. Nor would a collateral attack upon the ruling of the District Court, so construed, be precluded at this time by virtue of the doctrine of *res judicata*, as claimed by petitioner. Petitioner's reliance upon *Duggan* v. *Sansberry*, 327 U. S. 499, to the effect that decisions of bankruptcy courts are not subject to collateral attack is wholly mis-

placed. That very case refers to *Kalb* v. *Feuerstein*, 308 U. S. 433, 438, 439, where it is stated:

> "It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally."

Section 77b did precisely this. This section, quoted supra, itself specifically conditions the bankruptcy court's power of approval upon the rights of creditors to withdraw upon modification.

It is apparent, therefore, that even if the Supplemental Trust Agreement did purport to modify the Plan, its approval by the Court was wholly void and subject to attack here.

3. Lastly, petitioner asserts that the Court of Appeals assumed that the controversy was solely between the Publicly-Held Bonds and petitioner's bonds, and that they ignored the interest of the other seventeen series in the surplus. Suffice it to say that the Circuit Court of Appeals at the outset of its opinion explicitly stated:

> "We may confine ourselves to the order which directed distribution of the collateral of the Fifth Series; and, indeed even more narrowly, to whether the Publicly-Held Bonds of that series were entitled to interest in full up to the time of payment, as against the bonds in the hands of the Prudence Realization Corporation (the successor of the guarantor of all the bonds), as against any claim of the former trustee (the Manhattan Bank) or as against the New Company itself."

Of course, the interest of the New Corporation was that of the other seventeen series. Accordingly, when the Court of Appeals pointed out that to deprive the Publicly-Held

Bonds of the Fifth Series of interest in full would be "spoliation of the beneficiaries of the trust", it was not unaware of the interest of the other series in the surplus in the Principal Account of the Fifth Series.

The decision of the Court of Appeals does not "frustrate the pattern of reorganization bargained for here". When the reorganization of the eighteen series became necessary, the problems of administering the underlying collateral were enormous. The object as in all such proceedings was as far as possible to make each of the series whole, that is, to return to each series what it had originally contracted for, the principal plus 5½% interest. However, it was foreseen that it was remotely possible that one series might by reason of a "windfall" find itself in the position not only of being made whole, but actually receiving a greater return than bargained for. We submit that it was for the sole purpose of avoiding such an eventuality that provision was made in the Supplemental Trust Agreement that if there should be any surplus after all the bonds in any series had been retired, such surplus should be distributed among the remaining series. But since, as to the Fifth Series, the funds are insufficient to pay the bonds in full with interest to the date of payment in accordance with their original tenor (i.e., to make them whole), it would be manifestly inequitable to turn over any of the Fifth Series funds to the other seventeen series.

WHEREFORE, it is respectfully requested that the petition for a writ of ceriorari be denied.

Respectfully submitted,

FRANK L. WEIL,
Attorney for Respondents,
James L. White, etc.

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PRUDENCE REALIZATION CORPORATION,
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BRIEF FOR PRUDENCE-BONDS CORPORATION (NEW CORPORATION) AND FOR TRUSTEE OF DEBTOR IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinions Below

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Jurisdiction

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Finance Corporation were denied on January 5, 1948 (R. 650). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended, 28 U. S. C. A. Sec. 347(a), and Section 24(c) of the Bankruptcy Act, as amended, 11 U. S. C. A. Sec. 47(c).

Statement

The issues decided by the Circuit Court of Appeals arose on four petitions to the Bankruptcy Court for instructions with respect to the distribution of Trust Fund collateral under the provisions of confirmed Plans of Reorganization and a Supplemental Trust Agreement approved by the Bankruptcy Court to carry out the Plans (R. 106-184, 427-477, 490-500, 530-542). Three of the petitions were filed by Prudence-Bonds Corporation, the New Corporation formed pursuant to the Plans of Reorganization (R. 108, 492, 532). The other petition was filed by City Bank Farmers Trust Company, Trustee under the Supplemental Trust Agreement (R. 429).

The decision of the Circuit Court of Appeals determines not only a dispute between the Publicly Held Bonds on the one side and the subordinated bonds on the other, but also the question among all eighteen Series of bonds, as to when collateral in a Series becomes surplus or excess available for pro rata distribution among the remaining Series of bonds outstanding at the time.

The Circuit Court of Appeals held that the bonds, as modified by the Plans, are not strictly income bonds on which interest is payable only out of the Net Income from the Trust Fund collateral, but that upon payment of the principal of the Publicly Held Bonds of a Series the net proceeds of all collateral remaining in the Trust Fund securing the Series are to be used to pay deficiencies of interest at the original rates borne by the bonds (R. 644). A Special Master and the Bankruptcy Court Judge in charge of the reorganization had held that the reorganized bonds were income bonds on which interest was payable

only out of the net income from the collateral, and that the net proceeds of the collateral remaining after payment of the principal of the Publicly Held Bonds were to be used to pay the principal of the subordinated bonds of the Series, and that any balance of collateral then remaining was distributable as principal pro rata among the remaining Series of Bonds outstanding at the time (R. 8-72).

Collateral which, under the decision of the Bankruptcy Court, would have been surplus available for payment of the principal of the subordinated bonds and for pro rata distribution as principal among all Series will, under the decision of the Circuit Court of Appeals, be applicable to pay deficiencies of interest on the bonds of those Series in which the collateral will liquidate for more than the principal amount of the Publicly Held Bonds. The decision of the Circuit Court of Appeals, therefore, adversely affects not only the petitioner, as holder of the subordinated bonds, but also numerous holders of bonds of those Series which will show a deficiency of principal.

In the Courts below, respondents the new Prudence-Bonds Corporation and the Trustee of the Debtor took no position on the issues decided by the Circuit Court of Appeals since they represent all eighteen Series of bonds. The issues, however, are of a novel character and of substantial importance in the administration of the Bankruptcy Act and to thousands of widely scattered holders of the Debtor's bonds and we, therefore, respectfully urge that the petition be granted.

Respectfully submitted,

CHARLES M. MCCARTY,
Counsel for Prudence-Bonds Corporation (New Corporation).

GEO. C. WILDERMUTH,
Counsel for Trustee of Debtor.

February 25, 1948.

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BRIEF FOR PRUDENCE BONDHOLDERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JOSEPH NEMEROV,
Counsel for Hilda S. Reese, et al., bondholders.

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Jurisdiction

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Statement

The issues decided by the Circuit Court of Appeals arose on four petitions to the Bankruptcy Court for instructions with respect to the distribution of Trust Fund collateral under the provisions of confirmed Plans of Reorganization and a Supplemental Trust Agreement approved by the Bankruptcy Court to carry out the Plans (R. 106-184, 427-477, 490-500, 530-542). Three of the petitions were filed by Prudence-Bonds Corporation, the New Corporation formed pursuant to the Plans of Reorganization (R. 108, 492, 532). The other petition was filed by City Bank Farmers Trust Company, Trustee under the Supplemental Trust Agreement (R. 429).

The Circuit Court of Appeals ostensibly deciding a dispute between publicly held bonds on the one hand and subordinated bonds on the other, went far beyond that, and, by its decision, additionally affected the rights of public bondholders which they then had under the aforesaid plans of reorganization in that said bondholders have been

deprived of the right to share in any surplus or excess that may become available under the said plans of reorganization for pro rata distribution among the remaining series of bonds outstanding at the time.

The Bankruptcy Court affirmed the Special Master in holding that the bonds of each series, under the said plans of reorganization were to be income bonds, that is, interest on said bonds was to be payable out of the net income derived from the collateral of each series; that any proceeds remaining after the payment of the principal of the publicly held bonds of each series were to be used to pay the principal of the subordinated bonds of said series; that any balance remaining was to be distributed as principal pro rata among the publicly held bonds of the remaining series which were outstanding at that time (R. 8-72).

The Circuit Court of Appeals reversed the court below to the extent of holding that the proceeds remaining after the payment of the principal of the publicly held bonds should be used not to pay the principal of the subordinated bonds of that series, but should be used for the purpose of paying to the publicly held bondholders of that series the deficiencies of interest as fixed in the original bonds prior to the consummation of the said plans of reorganization. In other words, the Circuit Court of Appeals disregarded the provisions of the said plans of reorganization which changed said bonds from fixed interest bonds to income bonds. By reason of the decision of the Circuit Court of Appeals the publicly held bonds of all the series became affected as we have hereinabove shown. The undersigned represents public bondholders of all of the eighteen series most of whom are adversely affected by the decision of the Circuit Court of Appeals.

We respectfully urge that the issues involved herein are of substantial importance to the numerous holders of publicly held bonds of the various series, and we therefore respectfully pray that the petition for writ of certiorari be granted.

Respectfully submitted,

JOSEPH NEMEROV,
Counsel for Hilda S. Reese, et al., bondholders.